

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 12-00119 SI

Plaintiff,

ORDER RE: GRAND JURY RECORDS

v.

JOSEPH ORTIZ, *et. al*,

Defendants.

On March 1, 2013, the Court held a hearing on defendant Joseph Ortiz' motion for an order for inspection and copying of jury records. Defendant has been provided with AO-12 reports, which contain demographic information about the indicting grand jury. In the reply brief, defendant states that at this juncture he is seeking an updated declaration from David Weir, the District's Jury Administrator, similar to the declaration that Mr. Weir provided in *United States v. Diaz*, CR 05-167. Defendant's reply also states that he is seeking statistical reports, such as an AO-11, or other material pertinent to juror utilization, including audit reports commissioned by the Court or provided to the Court.

The government contends that the production of the AO-12 reports is sufficient, and that the defendant has not made a *prima facie* showing of a Sixth Amendment violation to justify further production of documents. However, as defendant argues, "[b]ecause the right of access to jury selection records is 'unqualified,' a district court may not premise the grant or denial of a motion to inspect upon a showing of probable success on the merits of a challenge to the jury selection provisions." *United States v. Royal*, 100 F.3d 1019, 1025-26 (1st Cir. 1996).

1 The Court finds it appropriate to direct Mr. Weir to provide an updated declaration describing
2 the procedures used to compose grand jury lists, similar to the declaration that he provided in *United*
3 *States v. Diaz*, CR 05-167. However, as the Court explained at the hearing, the AO-11 report does not
4 contain demographic information and it pertains to petit juries, not grand juries, and thus this report
5 would not assist defendant in his investigation of the composition of the grand jury. The Court is
6 informed that a juror utilization report similar to the AO-11 is prepared for grand juries; again, however,
7 this report does not contain demographic information, and thus it would not appear that such a report
8 would be probative of the issues that defendant seeks to investigate.

9 Accordingly, the Court GRANTS defendant's motion to the extent that defendant requests an
10 updated declaration from Mr. Weir. The parties are directed to meet and confer regarding whatever
11 steps are necessary in order to procure such a declaration. With regard to the balance of the discovery
12 discussed in defendant's motion, the Court DENIES the motion without prejudice to renewal at a
13 subsequent time. As discussed at the hearing, if defendant wishes to seek additional discovery regarding
14 the composition of the grand jury, defendant may renew those requests either before Magistrate Judge
15 Beeler or this Court.

16 This order resolves Docket No. 437.

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18 **IT IS SO ORDERED.**

19 Dated: March 4, 2013



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21 SUSAN ILLSTON
United States District Judge